

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

CURTIS JOHNSON,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS *et al.*,

Defendants.

Case No. C05-5341RJB

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
NOVEMBER 11<sup>th</sup>, 2005**

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion to dismiss this action. (Dkt. # 7). The court has not ordered service and instead entered an order to show cause. (Dkt. # 5). Plaintiff did not respond. Pursuant to Fed. R. Civ. P. 41 (a), a plaintiff may dismiss an action without prejudice once prior to service.

This action should be dismissed at plaintiff's request pursuant to Fed. R. Civ. P. 41 (a). Plaintiff also asks that the filing fee not be collected in this case. The court is not aware of any authority that allows for a waiver of the filing fee. In conclusion, this action should be dismissed at plaintiff's request but the filing fee may not be waived. A proposed order accompanies this Report and Recommendation.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.

1 R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of  
2 appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule  
3 72(b), the clerk is directed to set the matter for consideration on **November 11<sup>th</sup>, 2005, 2005.**

4  
5 DATED this 6<sup>th</sup> day of October, 2005.

6 /s/ J. Kelley Arnold  
7 J. Kelley Arnold  
8 United States Magistrate Judge  
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